

Message Text

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SUBJECT: SUTCH TRIAL BEGINS

REF: WELLINGTON 3061

1. BEGIN SUMMARY. SUTCH TRIAL BEGAN OCTOBER 23 AFTER RECEIVING RELUCTANT CONSENT TO PROCEED FROM ATTORNEY GENERAL. SERIES OF MEETINGS WITH SOVIET DIPLOMAT CITED AS EVIDENCE BY PROSECUTION WITNESSES DURING FIRST DAY AND A HALF OF TRIAL. WHILE UNDER U.S. LAW, EVIDENCE MIGHT SEEM INSUFFICIENT THE OFFICIAL SECRETS ACT PLACES BURDEN OF PROOF ON ACCUSED TO SHOW HE HAS NOT BEEN IN COMMUNICATION WITH A FOREIGN AGENT. POSSIBLE USG INTEREST WAS TOUCHED UPON DURING CROSS-EXAMINATION OF PROSECUTION WITNESS. END SUMMARY.

2. THE PUBLIC TRIAL OF DR. WILLIAM SUTCH, CHARGED UNDER THE OFFICIAL SECRETS ACT, BEGAN IN WELLINGTON MAGISTRATE'S
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COURT ON OCTOBER 23 AFTER A FIVE DAY DELAY. SUTCH,

FORMER SECRETARY OF THE DEPARTMENT OF TRADE AND INDUSTRY AND CHAIRMAN OF THE NEW ZEALAND ARTS COUNCIL, WAS ARRESTED ON SEPTEMBER 26 AND CHARGED WITH OBTAINING INFORMATION QTE WHICH IS CALCULATED TO BE, OR MIGHT BE, OR IS INTENDED TO BE DIRECTLY OR INDIRECTLY USEFUL TO AN ENEMY. END QTE. DURING THE FIRST DAY AND HALF OF THE TRIAL PROSECUTION WITNESSES, NEARLY ALL OF WHOM HAVE BEEN IDENTIFIED AS MEMBERS OF THE NEW ZEALAND SECURITY INTELLIGENCE SERVICE, HAVE DESCRIBED THREE ACTUAL AND TWO ATTEMPTED MEETINGS BETWEEN SUTCH AND SOVIET EMBASSY OFFICIALS. ALTHOUGH THE EVIDENCE SO FAR PRESENTED MIGHT SEEM INSUFFICIENT UNDER U.S. STATUTES, UNDER THE OFFICIAL SECRETS ACT SUTCH IS PRESUMED GUILTY OF COMMUNICATING WITH A FOREIGN AGENT UNLESS HE CAN PROVE OTHERWISE.

3. IN CROSS-EXAMINATION OF ONE WITNESS, DESCRIBED ONLY AS MR. W, THE DEFENSE COUNCIL ASKED IF IT WERE NOT TRUE THAT THE AMERICAN EMBASSY HAD BEEN NOTIFIED SHORTLY AFTER SUTCH WAS ARRESTED.

THE WITNESS REPLIED THAT HE DID NOT KNOW. (IF ASKED, THE EMBASSY RESPONSE WILL BE THAT WE FIRST LEARNED OF THE ARREST THROUGH THE MEDIA LIKE EVERYONE ELSE.)

4. UNDER THE PROVISIONS OF THE OFFICIAL SECRETS ACT THE EVIDENCE AGAINST SUTCH HAD TO BE PRESENTED TO THE ATTORNEY-GENERAL, MARTYN FINLAY, WHO, AFTER STUDY OF THE DOSSIER, MUST DECIDE WHETHER THE CASE IS TO PROCEED. ON OCTOBER 18, THE DAY SUTCH WAS SCHEDULED TO APPEAR IN COURT, FINLAY HAD NOT YET MADE HIS RULING, SO THE CASE WAS DELAYED FOR FIVE DAYS. ON OCTOBER 21, IN AN INCREDIBLE PUBLIC STATEMENT, FINLAY CONSENTED TO THE TRIAL. IN HIS LONG STATEMENT FINLAY DWELT AT LENGTH ON THE OPPRESSIVE QUALITIES OF THE OFFICIAL SECRETS ACT, STATING THAT IT IMPOSED A HEAVY BURDEN ON THE DEFENDANT AND ONE WHICH MIGHT BE DIFFICULT TO DISCHARGE. HE SAID, IN DISCUSSING THE CASE, THAT CONFIDENTIAL

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WHAT HAD THE APPEARANCE OF A MELODRAMA MIGHT TURN OUT TO BE A FARCE. REFERRING TO THE CHARGES AGAINST SUTCH, FINLAY SAID THAT QTE WHILE MY OWN BELIEF IS THAT A PURPOSE PREJUDICIAL TO THE SAFETY OR INTERESTS OF THE STATE WOULD BE QUITE OUT OF CHARACTER IN THE CASE OF THIS PARTICULAR PERSON IT WOULD BE WRONG TO SAY THAT DISPOSES OF THE MATTER. END QTE. AFTER MORE CONDEMNATION OF THE ACT AND OBLIQUE SUPPORT AND

SYMPATHY FOR SUTCH, FINLAY CONCLUDED QTE IT IS, THEREFORE, WITH A HEAVY HEART AND AFTER MUCH REFLECTION, THAT I AM DRIVEN TO WHAT I HAVE CONCLUDED IS MY DUTY END QTE. WITHOUT IN ANY WAY PREJUDGING THE FINAL OUTCOME, FINLAY SAID, HIS DUTY WAS TO CONSENT TO FURTHER PROCEEDINGS AGAINST SUTCH UNDER THE ACT.

5. SIR JOHN MARSHALL, A FORMER PRIME MINISTER AND ATTORNEY-GENERAL, EXPRESSED IN PARLIAMENT THE WIDELY-HELD OPINION THAT FINLAY HAD INTERVENED IN THE ADMINISTRATION OF JUSTICE IN AN IMPRUDENT AND REPREHENSIBLE MANNER. FINLAY'S INJUDICIOUS AND PERSONAL OBSERVATIONS ON THE CASE, ACCORDING TO MARSHALL, WERE LIABLE TO PREJUDICE THE TRIAL.

6. EMBASSY COMMENT: ONE OF SUTCH'S CLOSEST ASSOCIATES IS DR. FINLAY. THE TWO LUNCH TOGETHER REGULARLY AND THERE WAS SOME PRIVATE SPECULATION THAT FINLAY WOULD REFUSE TO LET THE CASE PROCEED. HOWEVER, WE HAVE LEARNED FROM A REASONABLY RELIABLE SOURCE THAT PRIME MINISTER ROWLING ORDERED FINLAY TO PROCEED WITH THE PROSECUTION. FINLAY'S REMARKABLE STATEMENT, WHICH WAS CERTAINLY INTENDED TO INFLUENCE THE CASE IN SUTCH'S FAVOR, OBVIOUSLY WAS THE BEST HE COULD DO FOR HIS FRIEND UNDER THE CIRCUMSTANCES.

7. WE WILL SEND FURTHER REPORTS AS THE CASE PROCEEDS.
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